



## National Highway Traffic Safety Administration

[Docket No. NHTSA-2021-0063]

### **Polaris Industries Inc. and Goupil Industrie SA; Receipt of Petition for Temporary Exemption**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of receipt of petition for temporary exemption; request for comment.

**SUMMARY:** In accordance with statutory and regulatory requirements, Polaris Industries Inc. and Goupil Industrie SA (collectively, “petitioners”), have petitioned NHTSA for an exemption of the “Picnic-G6,” an all-electric truck that the petitioners state will be used as part of a grocery delivery service. The petitioners seek exemption from nine Federal motor vehicle safety standards (FMVSS) on the basis that an exemption would make the development or field evaluation of a low-emission vehicle easier and would not unreasonably lower the safety or impact protection level of that vehicle. NHTSA is publishing this document in accordance with statutory and administrative provisions, and requests comments on the petition. NHTSA has made no judgment at this time on the merits of the petition.

**DATES:** Comments on this petition must be submitted by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Daniel Koblenz, NHTSA Office of Chief Counsel, telephone: 202-366-5823, facsimile: 202-366-3820, address: National Highway Traffic Safety Administration, 1200 New Jersey Avenue S.E., Washington, DC 20590.

**ADDRESSES:** You may submit your comment, identified by the docket number in the heading of this document, by any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- Mail: Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12-140, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call 202-366-9322 before coming.
- Fax: 202-493-2251.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.transportation.gov/privacy](http://www.transportation.gov/privacy). In order to facilitate comment tracking and response, the agency encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

*Docket:* For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time, or to 1200 New Jersey Avenue, SE, West Building Ground Floor, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays. To be sure someone is there to help you, please call

## **SUPPLEMENTARY INFORMATION:**

### **I. Statutory and Regulatory Requirements**

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified at 49 U.S.C. 30113, authorizes the Secretary of Transportation (NHTSA by delegation), to exempt motor vehicles from an FMVSS or bumper standard on a temporary basis, under specified circumstances and on terms the agency deems appropriate. The Secretary has delegated the authority for implementing this section to NHTSA.<sup>1</sup>

The Safety Act authorizes NHTSA (by delegation) to grant, in whole or in part, a temporary exemption to a vehicle manufacturer if certain specified findings are made. The agency must find that the exemption is consistent with the public interest and with the objectives of the Safety Act.<sup>2</sup> In addition, exemptions under § 30113 must meet one of the following bases:

(i) compliance with the standard[s] [from which exemption is sought] would cause substantial economic hardship to a manufacturer that has tried to comply with the standard[s] in good faith;

(ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard;

(iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or

(iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.<sup>3</sup>

The petitioners have submitted a petition under the third of these bases. The petitioners request that NHTSA grant their petition based on a finding that the exemption is consistent with

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<sup>1</sup> 49 CFR 1.95.

<sup>2</sup> 49 U.S.C. 30113(b)(3)(A).

<sup>3</sup> 49 U.S.C. 30113(b)(3)(B).

the public interest and the Safety Act, and that the exemption would facilitate the development or field evaluation of a low-emission motor vehicle and would not unreasonably reduce the safety level of that vehicle.<sup>4</sup> Under the Safety Act, entities applying for exemptions under this subsection must include, among other things, “a record of the research, development, and testing establishing that the motor vehicle is a low-emission motor vehicle and that the safety level of the vehicle is not lowered unreasonably by exemption from the standard.”

NHTSA established 49 CFR part 555, “Temporary Exemption from Motor Vehicle Safety and Bumper Standards,” to implement the statutory provisions concerning § 30113 temporary exemptions. The requirements in 49 CFR 555.5 state that the petitioner must set forth the basis of the petition by providing the information required under 49 CFR 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of the Safety Act.

A petition submitted on the low-emission vehicle (LEV) exemption basis must include the following information specified in 49 CFR 555.6(c):

- (1) Substantiation that the vehicle is a low-emission vehicle;
- (2) Research, development, and testing documentation establishing that a temporary exemption would not unreasonably degrade the safety or impact protection of the vehicle;
  - (i) A detailed description of how the motor vehicle equipped with the low-emission engine would, if exempted, differ from one that complies with the standard;
  - (ii) If the petitioner is presently manufacturing a vehicle conforming to the standard, the results of tests conducted to substantiate certification to the standard;
  - (iii) The results of any tests conducted on the vehicle that demonstrate its failure to meet the standard, expressed as comparative performance levels; and
  - (iv) Reasons why the failure to meet the standard does not unreasonably degrade the safety or impact protection of the vehicle.

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<sup>4</sup> 49 U.S.C. 30113(b)(3)(B)(iii).

(3) Substantiation that a temporary exemption would facilitate the development or field evaluation of the vehicle; and

(4) A statement of whether the petitioner intends to conform to the standard at the end of the exemption period; and

(5) A statement that not more than 2,500 exempted vehicles will be sold in the U.S. in any 12-month period for which an exemption may be granted.

## **II. Summary of Petition**

On September 16, 2020, in accordance with NHTSA's statutes and regulations, petitioners Polaris Industries Inc. and Goupil Industrie SA petitioned NHTSA for a temporary exemption from the requirements of ten FMVSS on the basis that an exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle. On December 2, 2020, the petitioners submitted a supplemental petition that revised their original petition by withdrawing their request for an exemption from FMVSS No. 203 (reducing the total number of standards in the exemption request to nine), and by revising their analysis concerning their request from an exemption from FMVSS No. 226. Public versions of the petitioners' submissions can be found on [regulations.gov](https://www.regulations.gov) in the docket stated in the header of this notice.

### **a. Description of the Picnic-G6**

The petitioners have requested an exemption to produce up to 100 specialized vehicles, which they intend to sell to Picnic, a grocery delivery company, which will use them to operate a grocery delivery service. The petitioners refer to the potentially exempted vehicles as "Picnic-G6" vehicles. According to the petitioners, the Picnic-G6 is a modified version of the "G6," an electric utility truck that they produce for the European market.<sup>5</sup> Based on the information the petitioners provided, it appears that the G6 is a light truck with a GVWR of 2,600 kilograms

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<sup>5</sup> The petitioners have provided the G6's type approval certificate as Exhibit 1.

(approximately 5732 pounds).<sup>6</sup> According to the petitioners, a standard G6 vehicle has a maximum speed of 80 km/h (49.7 mph), and “provides multiple other safety elements, including an acoustic alerting system to alert pedestrians to its presence, automatic headlamp and wiper activation, a robust steel chassis design, advanced crumple zone, and front-wheel drive.”<sup>7</sup>

The petitioners state that, unlike the a standard G6, the Picnic-G6 would be modified to have a maximum speed of 50 km/h (31 mph). In addition, all but 10 of the Picnic-G6 vehicles would have a single designated seating position, for the driver. The petitioners state that the 10 Picnic-G6 that also have a front passenger seat would be used to train drivers. None of the vehicles would have more than two seating positions. The petitioners state that the Picnic-G6 would have a range of about 90 miles. According to the petitioners, the vehicles will be modified to include a “specialized grocery carrying box” on the vehicle’s chassis after being sold to Picnic for use in its grocery delivery pilot.

In terms of how the vehicles will be operated, the petitioners state repeatedly throughout the petition that Picnic would operate the Picnic-G6 vehicles on lower-speed streets in dense urban and suburban areas. The petitioners also state that the vehicles would travel at low speeds due to the need to make frequent delivery stops. The petitioners state that Picnic will train its employees to operate the Picnic-G6 vehicles, and that the company will forbid private use of the vehicles and require that all occupants be age 16 or older. The petitioners also state that these restrictions will be stated in warning labels placed on the vehicles.

A more detailed explanation of the Picnic grocery delivery service, as well as illustrations of what the Picnic-G6 may look like, can be found in the petition.

#### **b. Petitioners’ explanation for why the Picnic-G6 would be a low-emission vehicle**

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<sup>6</sup> The full specifications of a baseline G6 can be found in Exhibit 2.

<sup>7</sup> We note that the petitioners do not specify whether the acoustic alert system complies with FMVSS No. 141, *Minimum Sound Requirements for Hybrid and Electric Vehicles*. FMVSS No. 141’s requirements are more stringent than its European counterpart, UNECE Regulation 138, *Uniform Provisions Concerning the Approval of Quiet Road Transport Vehicles with Regard to their Reduced Audibility*.

To be eligible for an exemption under the LEV basis, the Picnic-G6 must be considered an LEV under section 202 of the Clean Air Act (42 U.S.C. 7521) at the time the vehicle is manufactured, and must emit a level of regulated air pollutants that is in an amount significantly below one of those standards.<sup>8</sup>

According to the petitioners, the Picnic-G6 would be an all-electric vehicle that emits zero emissions, and therefore would be eligible for an exemption under the LEV basis.

**c. Petitioners' explanation for why granting an exemption would not unreasonably lower the safety of the Picnic-G6**

FMVSS No. 101, Controls and displays & FMVSS No. 135, Light vehicle brake systems

To ensure that the driver is informed of brake system malfunctions, FMVSS No. 101 and FMVSS No. 135 require that all light vehicles are required to have a telltale that informs the driver of various different types of issues with the vehicle's braking system.

According to the petitioners, rather than displaying the word "Brake" to indicate brake system malfunctions, low brake fluid conditions, and the application of the parking brake, as required under S5.5.5 of FMVSS No. 135, the Picnic-G6 will display the ISO brake symbol.<sup>9</sup> The petitioners argue that this will not unreasonably lower safety because the Picnic-G6 will only be operated by trained Picnic employees who will understand the meaning of the ISO brake symbol. The petitioners further argue that NHTSA has, in the past, found that, in some instances, noncompliance with the brake system telltale requirement is not consequential to safety due to driver familiarity with the ISO brake symbol.

FMVSS No. 118, Power-operated window, partition, and roof panel systems

The purpose of FMVSS No. 118 is to reduce the likelihood of death or injury due to accidental operation of a vehicle's power-operated window, partition, and roof paneled systems.

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<sup>8</sup> 49 U.S.C. 30113(a).

<sup>9</sup> It is not clear from the petition which ISO brake symbol would be used, or if the indicators would be combined. The various ISO brake symbols can be found through a search of ISO's Online Browsing Platform, <https://www.iso.org/obp/ui#home>. In addition, Exhibit 5 to the petition includes excerpts from the vehicle manual detailing the symbol.

NHTSA established the standard primarily to address the particular safety concern of child strangulation due to accidental operation of powered windows. The petitioners have requested an exemption from S6(c) of the standard, which specifies that the actuation device for closing a power-operated window must operate by pulling away from the surface on which it is mounted.

The petitioners provide several reasons that an exemption from FMVSS No. 118 would not unreasonably lower the safety of the Picnic-G6. First, the petitioners explain that Picnic intends to prohibit children below the age of 16 from riding in the Picnic-G6. The petitioners also argue that most of the exempted vehicles would be used for Picnic's delivery service, and so would be unlikely to be occupied by people other than Picnic employees. The petitioners also state that the power window controls are located on the center console, away from the windows, which makes accidental activation of the controls unlikely. Finally, the petitioners note that only 10 of the Picnic-G6 vehicles would have a front passenger seat, and those are used for training purposes, so it is unlikely that an adult or child would be present to accidentally activate the power window controls.

#### FMVSS No. 126, Electronic stability control systems

To reduce the risk of deaths due to rollover crashes, FMVSS No. 126 requires that all vehicles with a gross vehicle weight rating of 4,536 kilograms (kg) (10,000 pounds) or less be equipped with an electronic stability control (ESC) system. ESC systems use automatic computer-controlled braking of individual wheels to address critical situations in which a driver may lose control of the vehicle. Preventing single-vehicle loss-of-control crashes is the most effective way to reduce deaths resulting from rollover crashes because most loss-of-control crashes culminate in the vehicle leaving the roadway, which dramatically increases the probability of a rollover. NHTSA's crash data study of existing vehicles equipped with ESC demonstrated that these systems reduce fatal single-vehicle crashes of passenger cars by 55



percent and fatal single-vehicle crashes of light trucks and vans (LTVs) by 50 percent.<sup>10</sup>

NHTSA estimates that ESC has the potential to prevent 56 percent of the fatal passenger car rollovers and 74 percent of the fatal LTV first-event rollovers that would otherwise occur in single-vehicle crashes.

The petitioners have requested an exemption from FMVSS No. 126 in its entirety. According to the petitioners, an exemption would not unreasonably lower the safety of the Picnic-G6 because the vehicle has similar handling and stability as comparable vehicles equipped with ESC, and there are mitigating factors that reduce the likelihood that the Picnic-G6 would be involved in a loss-of-control crash.

To demonstrate that the Picnic-G6 would have similar handling and stability to a comparable vehicle that is equipped with ESC, the petitioners have provided a dynamic test report (Exhibit 6 to the petition) comparing the performance of the Picnic-G6, which is not equipped with anti-lock brakes or ESC, with a Nissan e-NV200, which the petitioners state is a comparable vehicle that is equipped with these features. The petitioners state that the report found that there were small differences in performance between the two vehicles that could be explained by the absence of anti-lock brake and ESC systems on the Picnic-G6. However, the petitioners state that “both vehicles had ‘same behavior with understeer chassis balance, non-surprising behavior during weight transfer maneuvers and [were] easy to control at the limit.’” In addition, the petitioners provided a static stability test report (Exhibit 7) that the petitioners claim shows that the Picnic-G6 has a static stability that is comparable to pickup trucks and passenger vans. (NHTSA notes that the petitioners have requested that the entirety of both of these reports be withheld from public view because they contain confidential business information.)

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<sup>10</sup> Sivinski, R., Crash Prevention Effectiveness of Light-Vehicle Electronic Stability Control: An Update of the 2007 NHTSA Evaluation; DOT HS 811 486 (June 2011).

The petitioners also state that the Picnic-G6's limited speed and range reduce the risk of loss-of-control events, which, petitioners argue, were relevant factors to NHTSA in the past in making the findings needed to grant an exemption from FMVSS No. 126 under the LEV basis. The petitioners also argue that, unlike other light trucks and delivery vehicles, the Picnic-G6 would not be operated at high speeds or over moderate and long distance, so the risk of a loss-of-control crash would be relatively lower, and should such a crash occur, the risk of injury would also be lower. Finally, the petitioners state that drivers would be trained to operate the exempted vehicle without ESC.

#### FMVSS No. 208, Occupant crash protection

To reduce the number of fatalities due to crashes, FMVSS No. 208 sets minimum performance requirements relating to protection of occupants inside the vehicle, which includes the requirements that most vehicles be equipped with seat belts and advanced air bags. Per FMVSS No. 208, passenger cars and light trucks are required to provide protection using air bags for both belted and unbelted front outboard seated occupants of all sizes, including protections for out-of-position children in the front outboard passenger seat. The petitioners request an exemption from the entire standard, because the Picnic-G6 is not equipped with air bags of any type.<sup>11</sup>

The petitioners provide the following rationale for their request. First, according to the petitioners, the Picnic-G6 is compliant with the United Nations Economic Commission for Europe (UNECE) regulation 12 for the protection of the driver against the steering mechanism in the event of impact, and UNECE regulation 29 for the protection of the occupants of the cab of a commercial vehicle.<sup>12</sup> Moreover, the petitioners state that, despite the Picnic-G6's lack of air

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<sup>11</sup> We note that the petitioners have requested an exemption from the entire standard, not just the requirement that the vehicle be equipped with air bags. However, it appears from the petition that the Picnic-G6 would be equipped with some occupant protection features, including seat belts. The petitioner has not sought exemptions from FMVSS No. 209, *Seat belt assemblies*, or FMVSS No. 210, *Seat belt assembly anchorages*.

<sup>12</sup> UNECE standards established under the 1958 UN ECE Agreement Concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts (the "1958 Agreement") are type approval standards. The 1958 Agreement is an international agreement that provides

bags, an exemption would not lower the safety risk of the vehicle for several reasons. First, they argue that the Picnic-G6 would be able to meet the S6 injury criteria requirements (aside from chest compression) for the Hybrid III (50<sup>th</sup> percentile male) test dummy. The petitioners have provided simulation data to support this claim as Exhibit 8.

The petitioners also argue that the absence of air bags would have “little impact” on the level of safety of the Picnic-G6 because of the vehicle’s use profile. Specifically, the petitioners argue that the Picnic-G6’s maximum speed of 31 mph, its limited ~90-mile range, and its likely use on exclusively urban and “dense-suburban” local roads, mean that the Picnic-G6 has a low probability of being involved in a crash, and that any crashes that do occur will be lower speed and thus have a reduced risk of injury. The petitioners also argue that the low number of vehicles they intend to produce pursuant to this exemption will limit risk, and support a finding that safety would not be unreasonably lowered.

In addition, the petitioners argue that an exemption for the Picnic-G6 would be consistent with the standard’s carve-outs for “walk-in” vans and U.S. Postal Service vans that are equipped with type-2 (lap and shoulder) seat belt assemblies. The petitioners argue that the reasoning behind these carve-outs is that these vehicles are at a low risk of being involved in a serious crash because they are used to make deliveries in urban and suburban areas where the driver makes frequent stops. Moreover, the petitioners note that NHTSA declined to require air bags for U.S. Postal Service vehicles because the agency believed that they would provide a marginal safety benefit to postal workers given their use profile and the fact that the U.S. Postal Service requires employees to wear seat belts while working. The petitioners state that, like the U.S. Postal Service, Picnic intends to require all Picnic-G6 occupants to wear seat belts.

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procedures for establishing uniform regulations regarding new motor vehicles and motor vehicle equipment and for reciprocal acceptance of type-approvals issued under these regulations by contracting countries. While the United States is a member of the UN ECE, it is not a contracting party to the 1958 Agreement, and thus is not bound by standards established under the 1958 Agreement.

Finally, the petitioners argue that the lack of occupant protection requirements that are intended to protect children would not reduce safety because all but 10 of the exempted Picnic-G6 vehicles would not have a passenger seat. Moreover, for the 10 training vehicles that do have passenger seats, the petitioners state that Picnic would prohibit passengers under the age of 16, would forbid private use of the exempted vehicles, and would place warning stickers to inform occupants of these restrictions.

#### FMVSS No. 214, Side impact protection

To reduce the risk of injuries to vehicle occupants in side impact crashes, FMVSS No. 214 sets out requirements for door crush resistance and side-impact crash performance, including a moving deformable barrier and vehicle-to-pole crash tests. The petitioners seek an exemption from this standard in its entirety.

According to the petitioners, an exemption would not unreasonably lower the safety of the Picnic-G6 because, while the vehicle would not be certified to FMVSS No. 214, simulated testing shows it would meet door crush and moving deformable barrier tests, and the vehicle would meet the vehicle-to-pole test requirements using the 50<sup>th</sup> percentile male dummy for all injury criteria except head injury and lower-rib deflection (the petitioners specify that lower-rib deflection is 0.3mm outside the standard's limit).<sup>13</sup> In addition, the petitioners claim the Picnic-G6 would comply with the UNECE regulation 135 with regard to their Pole Side Impact performance.

The petitioners also argue that the Picnic-G6 is similar to “walk-in” vans, which are excluded from the standard.<sup>14</sup> The petitioners argue that the non-training Picnic-G6 vehicles would only have a driver's seat, and while they would not have room for a person to enter the cargo area of the vehicle, the “use profile” of the Picnic-G6 would be similar to that of walk-in

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<sup>13</sup> A report of the results of this simulation testing was attached as Exhibit 9.

<sup>14</sup> Standard No. 214 defines a “walk-in van” as “a special cargo/mail delivery vehicle that has only one designated seating position. That designated seating position must be forward facing and for use only by the driver. The vehicle usually has a thin and light sliding (or folding) side door for easy operation and a high roof clearance that a person of medium stature can enter the passenger compartment area in an up-right position.”

vans. That is, petitioners state, both vehicle types are designed to make deliveries in urban and suburban areas where the driver makes frequent stops and operates the vehicle at low speeds that reduce crash risk.<sup>15</sup>

Finally, the petitioners argue that the low volume of vehicles permitted under the exemption will limit safety risk, and point out that NHTSA has cited this as a consideration in prior exemption grants.

#### FMVSS No. 225, Child restraint anchorage systems

FMVSS No. 225 requires, and specifies standards for, child restraint anchorage systems to reduce the risk of anchorage system failure, increase the likelihood that child restraints are properly secured, and more fully achieve the potential effectiveness of child restraint systems in motor vehicles. This standard requires the front outboard passenger seat in a vehicle that has no rear seats to have a tether anchorage, and requires a full child restraint anchorage system in the front outboard seating position in a vehicle that has no air bag at that position due to a grant of a part 555 exemption.<sup>16</sup> The petitioners have requested an exemption from the entire standard for the 10 training vehicles.

The petitioners argue that an exemption would not unreasonably lower the safety of the training Picnic-G6 vehicles because Picnic would implement a company policy that would forbid the use of the vehicle with passengers under age 16, forbid private use of the vehicle, and place stickers in the vehicle warning of these restrictions. The petitioners further argue that the use of the Picnic-G6 as a delivery makes it unlikely that children will ride in it, and that an exemption would be consistent with the FMVSS No. 226's carve-out for funeral coaches. Finally, the petitioners argue the small number of training Picnic-G6 vehicle makes it unlikely that children would be passengers.

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<sup>15</sup> NHTSA notes that, in the final rule adopting FMVSS No. 214, the agency stated that it excluded walk-in vans from the standard not because walk-in vans would be used for deliveries, but because "it is impracticable for such vehicles to meet the side door strength requirements because of their special design features." 56 FR 27427, 27431.

<sup>16</sup> See FMVSS No. 225, S5(c)(1)(i) & (iii).

## FMVSS No. 226, Ejection mitigation

FMVSS No. 226 relates to ejection mitigation in the event of a rollover. The purpose of this standard is to reduce the likelihood of ejections of vehicle occupants through side windows during rollovers or side impact crashes. The petitioners seek an exemption from this standard in its entirety.

The petitioners make three arguments for why an exemption from FMVSS No. 226 would not unreasonably lower the safety of the Picnic-G6. First, they argue that the Picnic-G6 would be able to meet the displacement requirements under S4.2.1 of the standard using laminated-glazing side windows as the sole means of achieving displacement performance.<sup>17, 18</sup> The petitioners argue that the glazing will mitigate the risk of ejection, especially when the window is in the closed position. The petitioners have provided documentation of computer-simulated testing demonstrating that the Picnic-G6 will meet the displacement requirements of FMVSS No. 226 when the windows are closed.<sup>19</sup>

Second, the petitioners argue that the Picnic-G6's limited speed (maximum 31 mph), its limited range (~90 miles), and the types of roads on which Picnic intends to operate it (urban and dense suburban local roads) make the risk of a crash low, and any crash that does occur would likely occur at a lower speed. Lastly, the petitioners argue that the Picnic-G6 is similar to "walk-in" vans, which are excluded from the standard.<sup>20, 21</sup> The petitioners argue the non-training versions of the vehicles would only have a driver's seat, and while they would not have

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<sup>17</sup> Note that FMVSS No. 226 prohibits the use of "movable glazing" as the sole means of meeting the displacement requirements. S4.2.1.1. That is, laminated glazing alone cannot be used to meet FMVSS No. 226 if the window with the glazing can be rolled down. The glazing on the petitioners' vehicles is movable, and thus the laminated glazing countermeasure is not sufficient to meet FMVSS No. 226.

<sup>18</sup> Per FMVSS No. 226, the vehicle must meet the requirements of S4.2.1 after the window glazing has undergone the "pre-breaking" procedure described in S5.4.1. It is not clear from the petition whether the Picnic-G6 would be able to meet the requirements of S4.2.1 using window glazing alone if the glazing is pre-broken.

<sup>19</sup> See Exhibit 14.

<sup>20</sup> The standard defines a walk-in van as "special cargo/mail delivery vehicle that only has a driver designated seating position. The vehicle has a sliding (or folding) side door and a roof clearance that enables a person of medium stature to enter the passenger compartment area in an up-right position." FMVSS No. 226, S3.

<sup>21</sup> In the final rule establishing FMVSS No. 226, the agency justified excluding walk-in vans solely "on practicability grounds." 76 FR 3211, 3291.

room for a person to walk into the cargo area of the vehicle, the “use profile” of the Picnic-G6 (making deliveries in urban and dens suburban areas) would be similar to that of walk-in vans.

FMVSS No. 305, Electric-Powered Vehicles; Electrolyte Spillage and Shock Protection

FMVSS No. 305 establishes requirements to reduce deaths and injuries during and after a crash that occur because of electrolyte spillage from electric energy storage devices, intrusion of electric energy storage/conversion devices into the occupant compartment, and electric shock. The petitioners have requested an exemption from several requirements relating to shock protection.

According to the petitioners, an exemption would not unreasonably lower the safety of the Picnic-G6 because, while the vehicle is not certified to FMVSS No. 305, it does meet the analogous European regulations for electrical safety in UNECE regulation 100. A side-by-side comparison of the two standards can be found in the petition, as well as documentation relating to type approval for UNECE regulation 100.

**d. Petitioners’ explanation for how an exemption would facilitate the development and field evaluation of the vehicle**

The petitioners state that an exemption would facilitate the development and the field evaluation of the Picnic-G6 in several ways. First, the petitioners state that an exemption would enable the collection and analysis of information from real-world use to assist with the development of current or future low-emission vehicles. Second, an exemption would facilitate production of future FMVSS-compliant low-emission vehicle models while the petitioners work to achieve FMVSS compliance. Third, it would enable further evaluation of the market for low-emission vehicles by allowing the petitioners to assess the Picnic-G6’s viability in the U.S. market, and the viability of the Picnic grocery delivery pilot. Fourth, the petitioners argue that an exemption would demonstrate to the public the capabilities of electric vehicles, which could further encourage consumers to acquire goods through ecommerce options that rely on infrastructure that has a low-carbon footprint and on delivery models that reduce road

congestion. Finally, an exemption would provide consumers with a “safe, all-electric option” as the petitioners develop modifications to the Picnic-G6 to make it FMVSS-compliant, thereby accelerating the entry of a small-sized, speed-limited, all-electric utility vehicle option among a field that typically consists of larger, gasoline-powered vehicles or LSVs.

**e. Petitioners’ explanation for why an exemption would be in the public interest**

The petitioners argue that an exemption would be in the public interest because it would increase consumer choice and improve access to goods deliveries by zero-emission vehicles. The petitioners also argue that an exemption would demonstrate to the public the viability of all-electric utility vehicles through the Picnic pilot. The petitioners further state that the exemption would allow for the petitioners to evaluate both the viability of delivery models like the Picnic pilot, as well as the performance of its all-electric utility vehicles generally. In addition, the petitioners argue an exemption would allow for the collection of information that would assist with the further development of all-electric utility vehicles. The petitioners also argue that the Picnic pilot would provide employment opportunities to an estimated 600 people relating to its delivery service. Further, the petitioners state that, if the Picnic pilot is successful, the exemption could pave the way for additional jobs relating to the development of an FMVSS-compliant version of the Picnic-G6, which the petitioners expect would be manufactured at one of its U.S. factories.

**III. Request for Comment**

The agency seeks comment from the public on the merits of Polaris/Goupil’s application for a temporary exemption. In addition, we seek comment on what restrictions, if any, the agency should place on an exemption should the agency determine an exemption is appropriate (e.g. operational restrictions, limits on transfer of ownership, etc.). After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

NHTSA has made no judgment at this time on the merits of the petition.



## **IV. Public Participation**

### **How long do I have to submit comments?**

Please see DATES section at the beginning of this document.

### **How do I prepare and submit comments?**

- Your comments must be written in English.
- To ensure that your comments are correctly filed in the Docket, please include the Docket Number shown at the beginning of this document in your comments.
- If you are submitting comments electronically as a PDF (Adobe) File, NHTSA asks that the documents be submitted using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions. Comments may be submitted to the docket electronically by logging onto the Docket Management System website at <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- You may also submit two copies of your comments, including the attachments, to Docket Management at the address given above under ADDRESSES.

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <http://www.whitehouse.gov/omb/fedreg/reproducible.html>. DOT's guidelines may be accessed at [http://www.bts.gov/programs/statistical\\_policy\\_and\\_research/data\\_quality\\_guidelines](http://www.bts.gov/programs/statistical_policy_and_research/data_quality_guidelines).

### **How can I be sure that my comments were received?**

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

### **How do I submit confidential business information?**

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under FOR FURTHER INFORMATION CONTACT. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under ADDRESSES. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR part 512). To facilitate social distancing during COVID-19, NHTSA is temporarily accepting confidential business information electronically. Please see <https://www.nhtsa.gov/coronavirus/submission-confidential-business-information> for details.

**Will the agency consider late comments?**

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider for this rulemaking, we will consider that comment as an informal suggestion for future rulemaking action.

**How can I read the comments submitted by other people?**

You may see the comments on the Internet. To read the comments on the Internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued under authority delegated in 49 CFR 1.95 and 501.4.

**Steven S. Cliff,**

*Acting Administrator.*

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